

REMARKS

Summary of Office Action

Claims 1-8, 13-21, 23-25, 27, and 53-74 are pending in this application.

The Examiner allowed claims 23-25, 27, 53-68, and 72-74.

Claim 15 was objected to for being dependent upon a rejected base claim, but was indicated to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

The Examiner finally rejected claims 1, 2, 5, 6, 16-21, and 69 under 35 U.S.C. § 102(e) as being anticipated by Shapiro et al. U.S. Patent No. 6,436,139 (hereinafter "Shapiro") and finally rejected claims 3, 4, 7, 8, 13, 14, 70, and 71 under 35 U.S.C. § 103(a) as being obvious from Shapiro.

The Examiner also objected to the specification for an informality.

Summary of Applicants' Reply

Applicants appreciate the allowance of claims 23-25, 27, 53-68, and 72-74 and the indication that claim 15 contains allowable subject matter.

Applicants have proposed amending independent claims 1 and 69 to make more clear the structural relationships between the elements and have proposed amending dependent claims 8 and 15-18 to conform to claim 1, amended as proposed.

Applicants have also proposed amending the specification to correct the informality.

No new matter has been added.

Reconsideration of this application in view of the proposed amendments and following remarks is respectfully requested.

Showing of Good and Sufficient Reasons  
Under 37 C.F.R. § 1.116(b)(3)

Applicants request amendment of this application, even though a final rejection has been issued. The proposed amendments of claims 1 and 69 merely make more clear what applicants believe has been apparent all along regarding the structural relationships of the claim elements.

The proposed amendment of the specification merely corrects an informality.

Applicants therefore submit that these amendments should not require any additional search or consideration. Moreover, these amendments should place the application in condition for allowance. Accordingly, applicants respectfully request entry of the proposed amendments and consideration of the following remarks.

Objection to the Specification

The Examiner requested applicants to clarify the specification in view of the following claim 1 limitation: "the hollow region comprising most of the volume of the [implant] body portion."

This objection is respectfully traversed.

Applicants have proposed amending the specification to include the following sentence: "Accordingly, based on the preferred wall thicknesses and preferred ranges of length,

width, and depth described above, hollow central region 7 comprises preferably most of the volume of the implant.” Support for this proposed amendment is found in the specification on page 8, lines 17-21 (regarding preferred ranges of length, width, and depth); page 9, lines 8-11 (regarding preferred wall thicknesses); and FIGS. 1A and 1B.

Accordingly, applicants respectfully request that the objection to the specification be withdrawn.

Rejections of Claims Under 35 U.S.C. § 102(e)

Independent claims 1 and 69 and dependent claims 2, 5, 6, and 16-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Shapiro.

These rejections are respectfully traversed.

Independent claim 1, amended as proposed, requires that at least one of the longitudinal ends of an implant comprises a bone receiving channel extending there across. The channel has a first depth relative to a first side of the outer surface extending along the length of the body portion and a second depth relative to a second side of the outer surface extending along the length of the body portion. The first and second sides are opposite each other and the first and second depths have different measurements. (See applicants’ FIG. 1C and specification, page 10, lines 7-17, specifically noting first and second face depths F1 and F2.)

Shapiro plainly has no such channel on either of its longitudinal ends 34 or 36. In particular, see Shapiro’s FIGS. 4A, 4B, and 4C, which show no channel extending across second end 36 and a symmetrically-shaped tool driving slot 16 extending across first end 34 (also shown in Shapiro’s FIG. 1). Slot 16 does not have first and second depths of different measurements

relative to opposite sides of the outer surface of Shapiro's interbody device 10 (best seen in FIG. 4B).

Furthermore, while thread cutouts 14 and 20 and opposing sidewalls 22 and 24 may arguably be considered channels, they do not extend across either end 34 or 36.

Still further, Shapiro in no way suggests, either expressly or impliedly, that either first end 34 or second end 36 may have a bone receiving channel as defined in claim 1, amended as proposed, extending there across.

Accordingly, independent claim 1, amended as proposed, is neither anticipated by nor rendered obvious from Shapiro.

Similarly, independent claim 69, amended as proposed, is also neither anticipated by nor rendered obvious from Shapiro.

Dependent claims 2, 5, 6, and 16-21, which depend from claim 1, should also no longer be anticipated by or rendered obvious from Shapiro (i.e., dependent claims are patentable if their independent claim is patentable).

Accordingly, applicants respectfully request that the rejections of claims 1, 2, 5, 6, 16-21, and 69 under 35 U.S.C. § 102(e) be withdrawn.

Rejections of Claims Under 35 U.S.C. § 103(a)

Dependent claims 3, 4, 7, 8, 13, 14, 70, and 71 were rejected under 35 U.S.C. § 103(a) as being obvious from Shapiro.

These rejections are respectfully traversed.

For at least the reasons discussed above with respect to independent claims 1 and 69, amended as proposed, claims 3, 4, 7, 8, 13, 14, 70, and 71, which depend from claim 1 or claim 69, should no longer be obvious from Shapiro (i.e., dependent claims are patentable if their independent claim is patentable).

Accordingly, applicants respectfully request that the rejections of claims 3, 4, 7, 8, 13, 14, 70, and 71 under 35 U.S.C. § 103(a) be withdrawn.

Objection to Claim 15

Dependent claim 15 was objected to as being dependent upon a rejected base claim, but was indicated to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

This objection is respectfully traversed.

For at least the reasons discussed above with respect to independent claim 1, amended as proposed, claim 15, which depends from claim 1, should no longer be objectionable.

Accordingly, applicants respectfully request that the objection to claim 15 be withdrawn.

Conclusion

The foregoing demonstrates that claims 1-8, 13-21, 23-25, 27, and 53-74 are

allowable. This application is therefore in condition for allowance. Reconsideration, entry of the proposed amendments, and allowance are accordingly respectfully requested.

Respectfully submitted,



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